

STATE OF MICHIGAN
COURT OF APPEALS

JANEEN JOHNSON,

Plaintiff-Appellant,

v

DETROIT MADISON CENTER LIMITED
PARTNERSHIP, LIMBACH COMPANY, and
SCHINDLER ELEVATOR CORPORATION,

Defendants-Appellees,

and

CITY OF DETROIT,

Defendant-Not Participating.

UNPUBLISHED

March 20, 2003

No. 236627

Wayne Circuit Court

LC No. 00-020916-NO

JANEEN JOHNSON,

Plaintiff-Appellee,

v

LIMBACH COMPANY and DETROIT
MADISON CENTER LIMITED PARTNERSHIP,

Defendants-Appellants,

and

SCHINDLER ELEVATOR CORPORATION,

Defendant,

and

No. 236964

Wayne Circuit Court

LC No. 00-020916-NO

CITY OF DETROIT,

Defendant-Not Participating.

JANEEN JOHNSON,

Plaintiff-Appellee,

v

SCHINDLER ELEVATOR CORPORATION,

Defendant-Appellant,

and

DETROIT MADISON CENTER LIMITED
PARTNERSHIP and LIMBACH COMPANY,

Defendants,

and

CITY OF DETROIT,

Defendant-Not Participating.

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants in this negligence action. We affirm. Defendants appeal as of right the trial court's denial of their motions for case evaluation sanctions. We reverse. Accordingly, we affirm in part and reverse in part.

Plaintiff allegedly sustained injuries when an elevator door prematurely closed as she was attempting entry. The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(10), holding that there was no genuine issue of material fact that defendants did not have notice of the allegedly defective condition.

On appeal, plaintiff argues that defendants did have notice that the elevator had not been working properly for approximately two months prior to the incident giving rise to this action. However, plaintiff failed to cite any legal authority in support of her position that she presented sufficient evidence to establish a question of fact with regard to notice. Consequently, the issue

is deemed abandoned. See *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). In any event, this issue is without merit because neither the general elevator service records nor the two other lawsuits relied on by plaintiff indicate a problem with the doors closing without warning. Further, plaintiff's reliance on the doctrine of *res ipsa loquitur* is misplaced because she failed to establish that it was applicable. See *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 193-194; 540 NW2d 297 (1995). Thus, on de novo review, and considering the evidence in the light most favorable to plaintiff, defendants were entitled to summary dismissal. See *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

Defendants argue on appeal that they were entitled to case evaluation sanctions, pursuant to MCR 2.403(O), because plaintiff rejected the case evaluation and her case was subsequently summarily dismissed. We agree. A trial court's decision regarding a request for case evaluation sanctions under MCR 2.403(O) is reviewed de novo as a question of law. However, because a trial court's decision with regard to the "interest of justice" provision of MCR 2.403(O)(11) is discretionary, we review that decision for an abuse of discretion. See *Luidens v 63rd Dist Court*, 219 Mich App 24, 37; 555 NW2d 709 (1996); *Cole v Eckstein*, 202 Mich App 111, 117; 507 NW2d 792 (1993). Further, the construction of a court rule is reviewed de novo as a question of law. *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000).

MCR 2.403(O) provides:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation.

(2) For the purpose of this rule "verdict" includes,

* * *

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

* * *

(11) If the "verdict" is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs.

Here, the discovery cutoff was May 10, 2001, and the case evaluation took place on June 5, 2001; plaintiff rejected the awards in her favor, while defendants accepted them. Consistent with the trial court's scheduling order, defendants' motions for summary disposition were scheduled to be heard on August 3, 2001, prior to the settlement conference that was scheduled for August 16, 2001. Following the trial court's summary dismissal of plaintiff's action, defendants moved for case evaluation sanctions pursuant to MCR 2.403(O). The trial court denied the motions, apparently relying on the "interest of justice" exception to the mandate that costs be awarded, holding that defendants should have brought their motions for summary dismissal before the case evaluation. We disagree with the trial court's interpretation and application of the "interest of justice" exception.

The “interest of justice” exception to the general rule that case evaluation sanctions are mandatory under MCR 2.403(O)(1) has been interpreted in the context of an analogous rule, MCR 2.405(D), the offer of judgment rule, which also mandates that costs be awarded when a settlement offer was rejected. In *Luidens, supra* at 31-33, this Court held that, because the purpose of MCR 2.405 is to encourage settlement and deter protracted litigation, the “interest of justice” exception was limited in its application to “unusual circumstances.” See, also, *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 472; 624 NW2d 427 (2000). “Unusual circumstances,” although not an exhaustive list, include where a case involves an issue of public interest or an area of law that is unsettled, or when there is misconduct or gamesmanship by a party. *Luidens, supra* at 35-36. Because both MCR 2.403 and 2.405 are designed to accomplish the same goals of encouraging settlement and deterring protracted litigation, *Sanders v Monical Machinery Co*, 163 Mich App 689, 691-692; 415 NW2d 276 (1987), the rationale espoused by *Luidens* with regard to MCR 2.405(D)(3) applies in the context of MCR 2.403(O)(11). Accordingly, unless unusual circumstances compel the application of the “interest of justice” exception, MCR 2.403(O)(11), the general rule of awarding case evaluation sanctions, MCR 2.403(O)(1), must be enforced.

In this case, the trial court denied defendants’ motions for case evaluation sanctions on the ground that defendants’ motions for summary dismissal could have been filed before case evaluation. However, the filing of the dispositive motions after case evaluation and after plaintiff rejected the awards was procedurally proper and consistent with the trial court’s own scheduling order. That defendants filed their dispositive motions after case evaluation does not present an unusual circumstance justifying the invocation of the interest of justice exception to the general rule that case evaluation sanctions be awarded under these circumstances. Therefore, we conclude that the trial court abused its discretion when it denied defendants’ motions for case evaluation sanctions.

Affirmed in part, reversed in part, and remanded for a determination of actual costs. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff